

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JOANN DIBIASIO,

Plaintiff,

v.

ORDER  
08-CV-743

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

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This case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1). On April 9, 2009, defendant filed a motion for judgment on the pleadings and plaintiff filed a response thereto on July 1, 2010. On January 7, 2010, plaintiff filed a motion for judgment on the pleadings. On June 10, 2010, Magistrate Judge Foschio filed a Report and Recommendation, recommending that defendant's motion should be denied, plaintiff's motion should be granted and the matter remanded for calculation of benefits.

Defendant filed objections to the Report and Recommendation on June 16, 2010.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and

Recommendation, and after reviewing the submissions of the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, defendant's motion is denied, plaintiff's motion is granted and the matter remanded for calculation of benefits. The Clerk of Court shall take all steps necessary to close the case.

SO ORDERED.

*s/ Richard J. Arcara*

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HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT JUDGE

DATED: August 23, 2010